

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

JANE SIRES,

Plaintiff,

vs.

VAN METER INDUSTRIAL, INC.,

Defendant.

No. C04-0095

ORDER

This matter comes before the court pursuant to the plaintiff's October 19, 2004 motion for summary judgment (docket number 6) and the defendant's November 11, 2004 motion for summary judgment (docket number 8). The parties have consented to the exercise of jurisdiction by a United States Magistrate Judge pursuant to 28 U.S.C. § 636(c) (docket number 13). The plaintiff's motion for summary judgment is granted in part and denied in part. The defendant's motion for summary judgment is denied.

PROCEDURAL BACKGROUND

The plaintiff, Jane Sires, filed an employment discrimination Complaint with the Mason City Human Rights Commission (MCHRC) on May 21, 1998, alleging a violation of Mason City Ordinance Chapter 10, which prohibits employment discrimination based on sex. On the same day, the plaintiff cross-filed her Complaint with the Equal Employment Opportunity Commission, alleging sex discrimination as prohibited by Title VII of the Civil Rights Act. A public hearing on the plaintiff's MCHRC Complaint was held on May 17, 2000, before Administrative Law Judge (ALJ) Ione G. Shadduck. On October 4, 2000, ALJ Shadduck issued a proposed decision and order, finding that the plaintiff had established a prima facie case of sex discrimination, and that the defendant's proffered legitimate non-discriminatory reasons for its actions were pretextual.

ALJ Shadduck further found that the plaintiff had been constructively discharged from her position. ALJ Shadduck proposed that damages be awarded to the plaintiff for back pay in the amount of \$43,959.77, front pay in the amount of \$9,202.00, emotional distress in the amount of \$7,500.00, administrative costs for the hearing, and attorney's fees. ALJ Shadduck also proposed that the defendant be ordered to "cease and desist from any further practices of sex discrimination," establish a "written policy for supervisory/management personnel transfers, promotions, demotions, wage increases/decreases and reporting procedures," and "develop job descriptions for each job for which it hires employees."

On December 15, 2000, the MCHRC issued a final ruling and order adopting in full ALJ Shadduck's proposed order. The MCHRC denied the appeals of both the plaintiff and the defendant to ALJ Shadduck's proposed order. The defendant then filed a petition for judicial review of the MCHRC's ruling, arguing that the MCHRC erred in finding that the defendant had engaged in sex discrimination when it failed to promote the plaintiff to the local leader position, and that the plaintiff had been constructively discharged. The plaintiff filed a cross-petition for judicial review of the MCHRC's damages award, arguing that (1) her back pay award should have been calculated on the salary she would have received had she not been discriminated against; (2) her front pay award was computed for an insufficient amount of time "given the egregious facts in this case"; (3) her award for emotional distress damages should be increased; and (4) because she cross-filed her complaint with the Equal Employment Opportunity Commission (EEOC), punitive damages should be awarded even though they were not available under Iowa law.

The Linn County District Court concluded that there was substantial evidence in the record to show that the plaintiff had established employment discrimination based on sex. The court went on to find, however, that substantial evidence did "not show that [the plaintiff] was subjected to intolerable working conditions which is required in order to assert a claim of constructive discharge." Accordingly, the court ordered that the

MCHRC's decision be reversed as to the plaintiff's claim of constructive discharge. In reviewing the plaintiff's cross-petition in regard to punitive damages, the court noted that although the plaintiff "recognizes that punitive damages are not available under Iowa discrimination law and none were awarded here. . . . [the plaintiff] cross-filed her complaint with the EEOC and contends punitives should now be available here." The court concluded that "[a]fter a review of the record, the Court finds no reason to change the damages award [of the MCHRC] which is supported by substantial evidence."

The defendant appealed the Linn County District Court's order to the Iowa Court of Appeals, arguing that (1) the district court erred in failing to reduce the award of back pay and front pay "in light of its conclusion [that the plaintiff] was not constructively discharged"; (2) there was not substantial evidence to support the award of emotional distress damages; and (3) "the [MCHRC's] remedial order is contrary to the law and not supported by substantial evidence." The plaintiff cross-appealed, contending (1) the district court erred in finding that she was not constructively discharged; and (2) the damage award was insufficient. By Order dated April 4, 2003, the Iowa Court of Appeals ruled that the Linn County District Court "properly reversed the [MCHRC's] finding that [the plaintiff] had been constructively discharged," because "[t]he loss of a single promotional opportunity alone is not sufficient to create intolerable working conditions." On the issue of damages, the court re-calculated the plaintiff's award by measuring her front and back pay damages as the difference between the amount that she would have made had she stayed in her position as operations manager and the amount that she would have made had she not been discriminated against and had received the local leader position. Accordingly, the court increased the plaintiff's damage award for front and back pay from \$43,959.77, as calculated by the MCHRC and affirmed by the Linn County District Court, to \$48,138.20. The court affirmed the MCHRC's emotional distress award. In regard to the remedial relief ordered by the MCHRC, the court found that "[b]ecause the evidence indicates sex discrimination reaches beyond the Mason City

Branch [of the defendant], the [MCHRC] was within its power to order company-wide remedial relief.” The court also affirmed the Linn County District Court’s refusal to award punitive damages, noting that the plaintiff had cited “no authority supporting her proposition that cross-filing her complaint with the EEOC grants the [MCHRC] the authority to award her punitive damages and we find none.”

The defendant next appealed to the Iowa Supreme Court, arguing that the Iowa Court of Appeals erroneously increased the front pay and back pay awards because “such damages are not recoverable where the employee has voluntarily resigned.” The plaintiff cross-appealed, arguing that (1) the Linn County District Court and Iowa Court of Appeals erred in concluding that there was not substantial evidence to support the MCHRC’s finding of constructive discharge; and (2) the Linn County District Court and Iowa Court of Appeals erred in ruling that the MCHRC could not award punitive damages. The Iowa Supreme Court reversed the Linn County District Court’s ruling that there was not substantial evidence in the record to prove that the plaintiff was constructively discharged. Specifically, the Iowa Supreme Court found that there was “substantial evidence that a reasonable person in [the plaintiff’s] position would have concluded there was no opportunity for fair treatment and the resulting work environment was so difficult or unpleasant that she had no choice but to resign.” Based on the court’s finding that there was substantial evidence in the record to support the MCHRC’s finding that the plaintiff had been constructively discharged, the court denied as moot the defendant’s argument that the plaintiff had not been entitled to front pay and back pay because she voluntarily quit. In regard to the plaintiff’s front and back pay awards, the court found that the plaintiff’s “earning loss” should be “measured by the difference between her actual earnings and \$52,000.00, the sum earned by [the person hired] in the position [of regional manager] discriminatorily denied to [the plaintiff].” Accordingly, the court found that the plaintiff’s damage award should be increased to \$94,104.00 for back pay and \$21,638.00 for front pay. In regard to the plaintiff’s claim for punitive damages, the court noted that the

plaintiff complained about the MCHRC's failure to award punitive damages, while conceding "that punitive damages are not available under the Iowa Civil Rights Act." The court found that the MCHRC correctly determined that it had no power to award punitive damages as it acted solely within its limited power to "determine complaints alleging an unfair or discriminatory practice under the Iowa Code" and the Iowa Civil Rights Act, neither of which allow for an award of punitive damages.

CONCLUSIONS OF LAW

A motion for summary judgment may be granted only if, after examining all of the evidence in the light most favorable to the nonmoving party, the court finds that no genuine issues of material fact exist and that the moving party is entitled to judgment as a matter of law. Kegel v. Runnels, 793 F.2d 924, 926 (8th Cir. 1986). Once the movant has properly supported its motion, the nonmovant "may not rest upon the mere allegations or denials of [its] pleading, but . . . must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). "To preclude the entry of summary judgment, the nonmovant must show that, on an element essential to [its] case and on which it will bear the burden of proof at trial, there are genuine issues of material fact." Noll v. Petrovsky, 828 F.2d 461, 462 (8th Cir. 1987) (citing Celotex Corp. v. Catrett, 477 U.S. 317 (1986)). Although "direct proof is not required to create a jury question, . . . to avoid summary judgment, 'the facts and circumstances relied upon must attain the dignity of substantial evidence and must not be such as merely to create a suspicion.'" Metge v. Baehler, 762 F.2d 621, 625 (8th Cir. 1985) (quoting Impro Prod., Inc. v. Herrick, 715 F.2d 1267, 1272 (8th Cir. 1983)). The nonmoving party is entitled to all reasonable inferences that can be drawn from the evidence without resort to speculation. Sprenger v. Fed. Home Loan Bank of Des Moines, 253 F.3d 1106, 1110 (8th Cir. 2001). The mere existence of a scintilla of evidence in support of the non-moving party's position will be insufficient; there must be evidence on which the jury could reasonably find for the non-moving party. Id.

A. Appropriateness of Plaintiff's Claim for Punitive Damages

The plaintiff moves for summary judgment on her claim for punitive damages, arguing that she is entitled to them under Title VII but not under Iowa law. Specifically, the plaintiff argues that (1) Title VII provides a supplemental right to sue in federal court when satisfactory relief is not obtained in a state forum, and satisfactory relief has not been obtained in this case because punitive damages were unavailable to her under Iowa law; (2) pursuant to the United States Supreme Court decision in New York Gaslight Club, Inc. v. Carey, her claim for punitive damages is allowable in federal court in order to further the legislative intent that Title VII provide supplemental relief to that obtained pursuant to state law; and (3) this court must give full faith and credit to the factual conclusions of the Iowa courts and those conclusions clearly establish that the plaintiff is entitled to punitive damages as a matter of law because the defendant's discrimination of the plaintiff was both intentional and done with malice or reckless indifference to the plaintiff's protected rights.

The defendant, in its resistance to the plaintiff's motion for summary judgment and in its November 11, 2004 motion for summary judgment, argues that the plaintiff's claim for punitive damages pursuant to Title VII is barred under the doctrine of claim preclusion. Specifically, the defendant argues that (1) the plaintiff's claim for punitive damages has previously been litigated before the MCHRC, the Linn County District Court, the Iowa Court of Appeals, and the Iowa Supreme Court and in each forum punitive damages were denied; (2) even if the court finds that the plaintiff's claim for punitive damages has not been previously litigated, the plaintiff cannot avoid the doctrine of claim preclusion simply by seeking a new remedy; (3) punitive damages were unavailable to the plaintiff because of the litigation path that she selected to pursue her claims, and if she had wanted to pursue a Title VII claim she should have requested right-to-sue letters from the EEOC and the MCHRC and filed an action in state or federal court asserting a Title VII claim; (4) the case law relied upon by the plaintiff is distinguishable from the case at bar because the plaintiff in New York Gaslight, unlike the plaintiff in this case, brought suit in federal

court but agreed with the defendant to dismiss it to state court except for attorney's fees, and the New York Gaslight holding is limited solely to a prevailing plaintiff's ability to obtain attorney's fees in federal court.

In New York Gaslight Club, Inc. v. Carey, the United States Supreme Court considered:

whether, under Title VII of the Civil Rights Act of 1964, a federal court may allow the prevailing party attorney's fees for legal services performed in prosecuting an employment discrimination claim in state administrative and judicial proceedings that Title VII requires federal claimants to invoke.

New York Gaslight Club, Inc. v. Carey, 447 U.S. 54, 56 (1980). The plaintiff in New York Gaslight alleged that she was discriminated against by the defendants in being denied employment as a cocktail waitress because she was black. She initially filed her charge with the EEOC, and her Complaint was then forwarded to the New York State Division of Human Rights (Division) pursuant to Title VII. The Division found that there was probable cause to believe that the defendants had engaged in unlawful discrimination in refusing to hire the plaintiff, and a state administrative hearing was held. The hearing examiner found that the defendants had discriminated against the plaintiff and ordered the defendants to both offer employment to the plaintiff and pay her back wages. The defendants appealed to the New York State Human Rights Appeal Board, which confirmed the Division's order.¹ Meanwhile, the EEOC determined that there was reasonable cause to believe that the defendants had discriminated against the plaintiff in violation of Title VII, and issued a right-to-sue letter.

¹ The Appellate Division of the New York Supreme Court affirmed the Appeal Board's determination. New York Gaslight, *supra*, at 58 (citing New York Gaslight Club, Inc. v. New York State Human Rights Appeal Board, 399 N.Y.S.2d 158 (1977)). The New York Court of Appeals denied the defendants' motion for leave to appeal. New York Gaslight Club, Inc. v. New York State Human Rights Appeal Board, 43 N.Y.2d 648 (1978).

The New York Gaslight plaintiff then filed suit in federal court seeking a declaratory judgment that the defendants' practices were unlawful under federal law, an order requiring the defendants to hire the plaintiff, back pay with interest, retroactive employment-related benefits, attorney's fees, and "other appropriate relief." Upon learning that the defendants' final state court appeal had been denied, the parties agreed to dismiss the federal action except for the plaintiff's claim for attorney's fees pursuant to Title VII. The United States District Court for the Southern District of New York denied the plaintiff's attorney's fee request. The United States Court of Appeals for the Second Circuit reversed, holding that "[a] complaining party who is successful in state administrative proceedings after having her complaint under Title VII referred to a state agency in accordance with the statutory scheme of that Title is entitled to recover attorney's fees in the same manner as a party who prevails in federal court." Carey v. New York Gaslight Club, Inc., 598 F.2d 1253, 1260 (2d Cir. 1979).

The United States Supreme Court granted certiorari and concluded that Title VII "authorize[s] a federal-court action to recover an award of attorney's fees for work done by the prevailing complainant in state proceedings to which the complainant was referred pursuant to the provisions of Title VII." The Court reasoned that "Title VII was designed to supplement, rather than supplant, existing laws and institutions relating to employment discrimination." New York Gaslight, *supra*, at 67 (quoting Alexander v. Gardner-Denver Co., 415 U.S. 36, 48-49 (1974)). The Court discussed the congressional intent underlying Title VII, noting that the procedures and remedies provided by Title VII are expected to "mesh nicely, logically, and coherently with the State and city legislation" and that the goal of "remedying employment discrimination" is to be accomplished through a process in which "the Federal Government and the State governments could cooperate effectively." New York Gaslight, *supra*, at 63-64 (citing 110 Cong.Rec. 7205 (1964) (remarks of Sen. Clark)). The Court went on to hold:

Title VII explicitly leaves the States free, and indeed encourages them, to exercise their regulatory power over discriminatory practices. Title VII merely provides a supplemental right to sue in federal court if satisfactory relief is not obtained in state forums. . . . One aspect of complete relief is an award of attorney's fees, which Congress considered necessary for the fulfillment of federal goals.

Id. at 67-68.

The defendant argues that New York Gaslight is irrelevant to the case at bar because (1) the plaintiff in New York Gaslight, unlike the plaintiff in this case, brought suit in federal court but agreed to dismiss the case to state court except for the issue of attorney's fees; and (2) the holding of New York Gaslight is limited solely to a plaintiff's ability to obtain attorney's fees in federal court after having prevailed on the issue of discrimination in state administrative or court proceedings and should not be extended to allow for recovery of punitive damages. The defendant further argues that the plaintiff is barred by the doctrine of claim preclusion from bringing her claim for punitive damages because (1) the plaintiff's Title VII claim is "precisely the same claim as her previous sex discrimination claim" as it involves "the same rights, the same alleged wrongs, and the same evidence;" and (2) the fact that punitive damages are available under Title VII and not available under Iowa law "does not allow [the plaintiff] to avoid the claim preclusion doctrine" because pursuant to Iowa law, "a plaintiff cannot avoid claim preclusion by seeking new remedies," in this case punitive damages, for the same alleged wrong.

The court finds that the plaintiff's claim for punitive damages after succeeding on her discrimination claim in state administrative and court proceedings is allowed under Title VII and the Supreme Court's decision in New York Gaslight. First, the United States Supreme Court, in deciding New York Gaslight, did not limit its holding to plaintiffs who initially bring suit in federal court. Second, the Court did not expressly limit its holding to a supplemental award of attorney's fees under Title VII, but rather clearly and significantly stated:

Provision of a federal award of attorney's fees is not different from any other aspect of the ultimate authority of federal courts to enforce Title VII. For example, if state proceedings result in an injunction in favor of the complainant, but no award for back pay because state law does not authorize it, the complainant may proceed in federal court to 'supplement' the state remedy. The state law which fails to authorize back pay has not been pre-empted. In any event, if it can be said that § 706(k) pre-empts the state rule, we believe that Congress' intent to achieve this result is manifest.

Id. at 68. The Court thus provided at least one example, other than an award of attorney's fees, wherein a federal court should provide relief pursuant to Title VII when state law does not provide for such relief. Accordingly, the court finds that in light of the Supreme Court's decision in New York Gaslight, the plaintiff is not barred from seeking supplemental relief in the form of punitive damages pursuant to Title VII in federal court.

B. Plaintiff's Claim for Punitive Damages: Merits

Punitive damages may be awarded against an employer who has intentionally discriminated "with malice or with reckless indifference to the employee's federally protected rights." MacGregor v. Mallinckrodt, Inc., 373 F.3d 923, 930 (8th Cir. 2004) (citing 42 U.S.C. § 1981a(b)(1)). "The punitive damages inquiry requires a showing of the requisite malice or reckless indifference by certain individuals as well as a showing that the employer may be held liable for the conduct of those individuals." MacGregor, supra, at 930 (citing Ogden v. Wax Works, Inc., 214 F.3d 999, 1008 (8th Cir. 2000) (citing Kolstad v. American Dental Ass'n, 527 U.S. 526, 539 (1999))). In determining whether reckless indifference exists, the court determines whether the defendant employer had knowledge that it may be acting in violation of federal law. Id. (citing Walsh v. Nat'l Computer Syst., Inc., 332 F.3d 1150, 1161 (8th Cir. 2003) (quoting Kolstad, supra, at 535)).

The plaintiff contends that because this court must give full faith and credit to the factual conclusions of the Iowa courts, and because those factual conclusions clearly establish that the defendant's discrimination against the plaintiff was done intentionally and with malice or reckless indifference to her protected rights, the court must find as a matter of law that the plaintiff is entitled to punitive damages. The court disagrees. While it is true that this court must give full faith and credit to the MCHRC's factual conclusions as reviewed and established by the Iowa courts², those factual conclusions formed and supported the basis of the MCHRC's and Iowa courts' determinations that the defendant discriminated against the plaintiff because of her sex and that the plaintiff was constructively discharged, not whether the defendant intentionally discriminated against the plaintiff with the malice or reckless indifference required to sustain an award of punitive damages. The court finds that the factual conclusions established by the MCHRC and the Iowa courts do not, contrary to the plaintiff's assertion, "conclusively establish that [the defendant] intentionally discriminated against [the plaintiff]" and that the defendant "acted with malice or reckless indifference towards the plaintiff." The court finds, rather, that a trial is necessary to determine whether the defendant intentionally discriminated against the plaintiff with malice or reckless disregard of her federally protected rights.


² The court notes that it affords the MCHRC's and state courts' factual conclusions preclusive effect because there was judicial review of the administrative agency's factual conclusions. "Issues in Title VII claims are not subject to preclusion by unreviewed state administrative proceedings." Abramson v. Council Bluffs Community School Dist., 808 F.2d 1307, 1308 (8th Cir. 1987) (citing University of Tennessee v. Elliott, 478 U.S. 788 (1986)).

Upon the foregoing,

IT IS ORDERED

Plaintiff's motion for summary judgment as to the court's ability to award punitive damages in this case pursuant to Title VII is granted. The plaintiff's motion for summary judgment awarding punitive damages is denied. The defendant's motion for summary judgment is denied.

January 26, 2005.



JOHN A. JARVEY
Magistrate Judge
UNITED STATES DISTRICT COURT